O. F. 71 & 72—70,000—14-7-30

19 2?

Department of L.R. & Lett

OFFICE Bd of Rev

STATION Mysore

No

Dated

on F. 3845/27.

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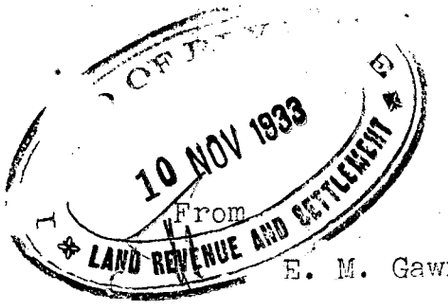
(SUBJECT.)

Advance loans - (S. Kanara) - Udipi taluk - Tour dist. Balaram Poojari - Lo. no. 105. 42. of 1333 - Arrears - Recovery - etc - Cancellation - Withdrawal.

* Not to be filled in in the case of permanent records.

Ref. A3--No. 4255/33



South Kanara Collector's Office,
Mangalore, dated 9th November 1933.

7-3885-

From

E. M. Gawne, Esq, I.C.S.,
Collector of South Kanara.

73
11/6/20

To

The Secretary to the Board,
Land Revenue & Settlement,
M a d r a s.

S i r,

Revenue Recovery:- Sale of land--Udipi Taluk--Tonse West village--S.No.33/1--sale for recovery of loan arrears--Irregularity--suit notice--orders requested.

In L. O. No. 105/1933 of Udipi Taluk a loan of Rs. 300/- was granted under the Agriculturists Loans Act by the Special Tahsildar to one Babanna Pujari on 22nd March 1924 for rebuilding his tenant's house destroyed by the floods in S. No. 33/1 of Tonse West village and also for repairing his own house damaged. The land benefited by the loan which was held by the borrower on mulgeni, was not given as security for the loan. One Naga Pujari, mulgar of the above land, stood surety for the borrower and executed a security bond mortgaging to Government his own private lands as security for the loan.

Vide pp. 9 and 21. (H)

Vide pp. 16-17 (H)

2. Six years later, i.e. in April 1930, the land benefited by the loan, viz. S. No. 33/1, which was free from the borrower's liability to Government was usufructuarily mortgaged by him for Rs.400/- to one Krishnaya and since then it has been in Krishnaya's possession and enjoyment. Meanwhile the surety Naga Pujari died and the lands mortgaged by him to Government as security for the loan were sold by his heirs to one J. F. Louis. But the borrower continued to pay the annual instalments of the loan in

time till 1931. In 1932, however, the borrower failed to pay the 8th instalment amounting to Rs.36-15-10 and the Tahsildar passed a summary recovery order. The total amount thereby payable by the defaulter was Rs.102-10-0, for the recovery of which both the lands secured and the defaulter's interest in the land benefited by the loan were attached and notified for sale. This was objected to on the one hand by certain members of the defaulter's family and on the other by J. F. Louis, the purchaser of the lands secured. The former stated that the house and property for the benefit of which the loan was given, was not the borrower's property, but belonged to the family and was not liable to be sold and that only the lands given as security should be proceeded against. The latter on his part desired that the house and other buildings benefited by the loan should first be sold. The Tahsildar disallowed the former objection. The Revenue Inspector to whom the papers had in the meanwhile been sent, sold something, which according to the description in the sale list, was not the defaulter's interest in the land benefited by the loan, but his residential house therein with its roof. In his sale reports, however, the Revenue Inspector stated that he sold the defaulter's interest in the land. The purchaser was no other than [illegible] referred to above.

2. The usufructuary mortgagee of the land (Krishnaya), who happened to be present at the sale and who had signed the sale list, then sent objection petition to the Collector, making allegations not only against the purchaser Louis, but also against the Revenue Inspector. The Sub Collector to whom the petition was sent for disposal, simply rejected without assigning any reason and confirmed the sale--not in respect of the house actually sold, but in respect of the defaulter's mulgeni interest in the land, which was not the actual thing sold. Subsequently the Sub Collector also issued a sale certificate in respect of that mulgeni interest. On the authority of this sale certificate, the purchaser appears to have taken possession of the land from the usufructuary mortgagee through the agency of the Civil Court and the latter has now sent me a suit notice, threatening to sue Government for a declaration that what was sold was only the house and not the land and for possession

4. This is a peculiar case, in which I find that there have been ir-

regularities from top to bottom. The loan was granted under the Agriculturists Loans Act, but the land benefited by the loan was not taken by the Special Tahsildar as security for it. The Revenue Inspector, who held the sale, did not understand what should be sold and what actually he sold and the Tahsildar did not put him right. The Sub Collector does not seem to have gone through the records carefully both when confirming the sale and when issuing the sale certificate.

5. No doubt, under note (4) to section 7 of Act XIX of 1883, any property belonging to the borrower, whether personal or real and whether included in the security or not can be proceeded against for the recovery of the loan, but this provision is applicable only to loans granted under the Land Improvement Loans Act. I do not however see any such provision in the Agriculturists Loans Act. On the other hand, section 5 of this Act, which corresponds to section 7 of the other Act, makes it clear that in cases of sales of land for the recovery of loans granted under the Agriculturists Loans Act, prior encumbrances are not extinguished. In the case in question, both on the date of the sale of the land and on the date of its attachment, what right, title, or interest remained for the defaulter in the land was only the equity of redemption, which probably was worth nothing. I do not think that the Tahsildar was right in notifying such an interest for sale along with the lands secured. The best course would have been to sell the lands secured and not the defaulter's interest or house in the land which was not secured. It is more than 2 months since the sale was confirmed by the Sub Collector and I request that the Board may be pleased to permit me to cancel the sale. The connected records are enclosed.

Your obedient servant,

(1) Current file pages 1 to 8. ✓ (E)
(2) Loan Order in Original. ✓ (G)
(3) L.O. file 105/33. ✓ (H)
(4) Taluk L.Dis. 7157-32. ✓ (F)
(5) Sub Collr's L.Dis. 5972/32. ✓ (D)

Collector.

Subject. 5 5

R. F. XXII-A-19—23,004—15-3-32 (6)

FOR MEMBER.

Advances - Loans - (S. Kanara) - Mudipi Taluk - Tonse West village - Babanna Pujari - L.o. No. 105 A.d. of 33 - Arrears - Recovery - Sale - Cancellation.

READ AGAIN B. P. No. _____, dated Authorised. _____ 193

" " " _____, " _____ 193

READ ALSO :—

Register No. _____, From the F. 3885/33; No. 8, dated _____ 193

" " _____, " " _____, " _____, " _____ 193

" " _____, " " _____, " _____, " _____ 193.

RESOLUTION. Note No. 3248 dated 25. 11. 193

In the circumstances stated the Board authorises the Collector to Cancel the sale in question.

2/. He is requested to take disciplinary action against the officers responsible for the irregularities pointed out by the

25.11.33.

Noted

Advances. loans - (S. Kanara) -
edifice taluk - Tonse West villages.
Kalabanna. Pujari - Ld. No. 105 Misc.
Arrears - Recovery - Sale - Cancellation

M3.

A.S.

A.S. (Sell.)

Please see Govt. memo, p... 2f. In the circumstances stated by the Collr he may be authorised under para 12 of S.O No. 41 to cancel the sale in question and to take disciplinary action against the officers responsible for the irregularities pointed out by him.

Vide BP at (23) for precedents.

L 379. Vol. II.

Mis. 2884
24.10.33.

15.11.33.

F3.

24/11/33

T.S

M3

24/01/34.

M3

Agreed

A.S. (Sell.)
24.11.33.

Draft submd below

25.11.33

A.S./6

24/11/33